

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) No. 18-CR-30021-MJR
EMMANUEL D. ABDON,)
Defendant.)

**DEFENDANT ABDON'S RESPONSE TO THE GOVERNMENT'S
MOTION IN LIMINE PURSUANT TO FEDERAL RULE OF EVIDENCE 412**

COMES NOW Defendant Emmanuel D. Abdon, through Assistant Federal Public Defender Daniel G. Cronin, and respectfully submits the following response to the Government's Motion in Limine Pursuant to Federal Rule of Evidence 412 (Doc. 28):

I. INTRODUCTION

The defense agrees with the government that Rule 412 of the Federal Rules of Evidence bars the defense "...from arguing, attempting to argue, presenting evidence, impeaching, or attempting to impeach the victim related to the victim's sexual behavior or sexual predisposition." *See Doc. 28 at p. 5.* Some questioning about sexually explicit texts will be necessary (*see Doc. 28 at FN 1*), but undersigned counsel does not view those texts as opening doors which Rule 412 firmly shuts.

However, the defense does intend to ask questions about A.F.'s appearance during her communications (at least, visual communications such as FaceTime) with Emmanuel Abdon. That is not because her hair, clothing, or use of makeup is in any way indicative of sexual predisposition or sexual history. Instead, her appearance when Emmanuel Abdon saw her is relevant to his prior understanding of her age.

II. RELEVANCE OF APPEARANCE TO AGE ESTIMATES

A. Clothing

While never a perfect gauge, one way in which people judge age is by the clothing being worn. Of course, that is in part because certain types of clothing are targeted to particular age groups:

The litigation consists of five actions, listed on Schedule A, that challenge the advertising practices of Justice Stores, a retail chain focused on selling fashionable clothes for girls ages 7 to 14.

In re: Tween Brands, Inc., Marketing and Sales Practices Litigation, 118 F.Supp. 3d 1382 (United States Judicial Panel on Multidistrict Litigation, 2015); *see also Bebe Stores, Inc. v. The May Department Stores International, Inc.*, 230 F.Supp.2d 980, 983 (E.D.Mo. 2002) (“Bebe’s clothes are targeted to women in the 18 to 30 age range.”). A.F.’s clothing when Emmanuel Abdon saw her says nothing about her sexuality, but it is relevant to his understanding of her age at those times.

B. Hair

Clairol’s “Loving Care” hair coloring products were sold with the slogan, “What would your husband do if suddenly you looked ten years younger?” *See* Wikipedia entry for Clairol (last accessed on 06-08-18).

Notwithstanding the sexism in that ad campaign, men have also used hair coloring products for decades in order to change their perceived age. *See, e.g., Houghton, et al. v. McDonnell Douglas Corp.*, 413 F.Supp. 1230, 1236 (E.D.Mo. 1976), *reversed by Houghton, et al. v. McDonnell Douglas Corp.*, 553 F.2d 561 (8th Cir. 1977), *cert. denied*, 434 U.S. 966 (1977) (“Plaintiff Houghton uses a darkening agent upon his hair to improve his appearance and bring it more into line with what he considers to be his physiological age, which he considers to be somewhere in the forties.”).

Perhaps for females especially, a hairstyle can dramatically alter how old or young its wearer appears:

I think Kate Beckinsale is the epitome of an actress who always looks younger than she is, and it's due to the long hair. Long, lush hair is youthful. But when Becks, who is 41, goes with an updo with volume, she takes on an air of elegance. **So, so sophisto and not quite so young.**

Amy Sciarreto, "How to Look Older with Makeup & Hair Tricks: Perfect for Anyone with a Case of 'Permanent Young Face'", Bustle (April 30, 2015) at p. 5 (last accessed on 06-08-18), available at <https://www.bustle.com/articles/79370-how-to-look-older-with-makeup-hair-tricks-perfect-for-anyone-with-a-case-of-permanent-young-face> (emphasis added). Clearly, the contrast between long hair worn down or in an updo is not the difference between sexual promiscuity and puritan virtue. Wherever Kate Beckinsale falls on that spectrum, it would be the same whatever her hairstyle. But in the opinion of the author quoted above, the updo makes Kate Beckinsale look older than when her hair is worn down.

C. Makeup

The online article by Amy Sciarreto, cited above, is replete with examples of makeup making herself look older. For example:

- "I also use a bottom lash mascara that allows me to get some separation...while posing with a Harry Styles cardboard cutout as though I were 16, of course. I think that definition of my bottom lashes gives my eye a bolder, edgier, and not-so-young look. It also shows deftness with makeup that comes from experience, so that's an intangible." Id. at p. 4.
- "Taylor Swift instantly transitions from girlish to siren when she swipes on a matte red lipstick. It's her signature, yes, and she's always sultry when she's wearing her hallmark red. A matte red looks so much more sophisticated than pink (though I love me a good fuschia lippy)." Id. at p. 6.
- "Adding contours makes your face appear more defined and more definition can be a product of life lived and well, age. Young girls aren't quite so definitive. So adding some cheekbones also adds some age." Id. at p. 9.

III. CONCLUSION

The defense has no intention of violating Fed.R.Evid. 412 - and destroying any credibility with the jury - by implying that clothes, hair, or makeup indicate sexual predisposition or sexual history.

Instead, the defense seeks reasonable latitude to explore commonsense notions of how clothing, hair, and makeup all contribute to the appearance by which someone judges age. It is precisely because personal appearance does not signal sexual experience or proclivity that this aspect of Emmanuel Abdon's trial will not run afoul of Rule 412.

Respectfully submitted,

/s/ Daniel G. Cronin
DANIEL G. CRONIN
Assistant Federal Public Defender
650 Missouri Avenue, Room G10A
East St. Louis, Illinois 62201
(618) 482-9050

ATTORNEY FOR DEFENDANT
EMMANUEL D. ABDON

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on June 8, 2018, he provided a copy of this document to:

Angela Scott
Assistant United States Attorney
Nine Executive Drive
Fairview Heights, Illinois 62208

via electronic filing with the Clerk of the Court using the CM/ECF system.

/s/ Daniel G. Cronin
DANIEL G. CRONIN